

IN THE UNITED STATES DISTRICT COURT  
FOR THE SOUTHERN DISTRICT OF TEXAS  
MCALLEN DIVISION

ESTATE OF GABRIEL MIRANDA JR., §  
Plaintiff §

vs. §

HARLINGEN CONSOLIDATED §  
INDEPENDENT SCHOOL DISTRICT, §  
*et al.* §  
Defendants §

CIVIL ACTION NO.: 7:18-cv-00348

JURY DEMAND

**DEFENDANTS HARLINGEN CONSOLIDATED INDEPENDENT SCHOOL DISTRICT**  
**and DR. ARTURO CAVAZOS and DEFENDANTS, HIDALGO COUNTY AND**  
**RAMON GARCIA'S ADVISORY TO THE COURT**

TO THE HONORABLE JUDGE OF SAID COURT:

NOW COME Defendants Harlingen Consolidated Independent School District ("HCISD") and Arturo J. Cavazos (collectively, "HCISD Defendants")<sup>1</sup> and Defendants Hidalgo County and Ramon Garcia (collectively, "Hidalgo County Defendant"), file this Advisory to the Court and show the Court the following:

1. Plaintiff filed its Original Complaint on November 12, 2018. Dkt. No. 1. On December 14, 2018, the HCISD Defendants filed their 12(b)(6) Motion to Dismiss for Failure to State a Claim Upon Which Relief Can Be Granted, which asserted qualified immunity on behalf of Dr. Cavazos. Dkt. No. 14. Hidalgo County Defendants also filed their 12(b)(1) Motion to Dismiss for Lack of Subject Matter Jurisdiction and 12(b)(6) Motion to Dismiss for Failure To State a Claim Upon Which Relief Can Be Granted, which asserted qualified immunity on behalf of Ramon Garcia. Dkt. No. 17. The other Defendants have also filed Rule 12 motions. Dkt.

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<sup>1</sup> The other defendants are represented separately.

Nos. 15-17. Plaintiff failed to respond to any of these Rule 12 motions within the time limit set by the Local Rules. *See* Dkt. No. 18. On January 21, 2019, Plaintiff filed a Combined Response to the pending Rule 12 motions. Dkt. No. 19. The HCISD Defendants filed their Reply on January 28, 2019. Dkt. No. 25.

2. The Court has not ruled on the HCISD Defendants' or Hidalgo County Defendants' motions to dismiss, but has taken them under advisement, and stated in its Minute Entry from the February 6, 2019, Initial Pretrial and Scheduling Conference that the pending Rule 12 motions are ripe and the Court will issue an Order. While Plaintiff asserted in its Response to the motions to dismiss, as well as through its counsel at the initial conference, that Plaintiff intended to amend its complaint, at this time no request for leave to amend the complaint has been filed.

3. The Court also issued a Rule 16 Scheduling Order on February 6, 2019. Dkt. No. 30. The HCISD and Hidalgo County Defendants do not wish to disturb the decision-making process of this Court, but as no Order has issued on their motion to dismiss, they have only thirty (30) days from the date the Rule 16 Scheduling Order was issued to file an interlocutory appeal on the basis that it is overly broad based on the assertion of Dr. Cavazos' and Ramon Garcia's qualified immunity from suit.

4. The Fifth Circuit has consistently held that a "district court's order that declines or refuses to rule on a motion to dismiss based on a government officer's defense of qualified immunity is an immediately appealable order." *Webb v. Livingston*, 618 Fed. Appx. 201, 205 (5th Cir. 2015). "The court has reasoned that such an order is effectively a denial of qualified immunity, a disposition that is immediately appealable as a collateral final order." *Id.* In this case, Dr. Cavazos and Ramon Garcia have asserted their qualified immunity, and neither the

Complaint nor the amendments proffered in Plaintiff's Response to the motion to dismiss make any specific allegations of unreasonable conduct violating a clearly established constitutional right against them. *See* Dkt. Nos. 1, 14, 19. While the HCISD and Hidalgo County Defendants do not wish to interfere with the Court's decision-making process, because the Rule 16 Scheduling Order was not limited to allow for discovery only on the issue of qualified immunity, it is overly broad and subject to interlocutory appeal. Defendants would prefer to avoid this step, but feel they will have to exercise this option should the Court not issue an Order on their pending motion to dismiss.

Respectfully Submitted,

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**CERTIFICATE OF SERVICE**

I, the undersigned, hereby certify that on the 27<sup>th</sup> day of February 2019 a true and correct copy of the foregoing has been served on all counsel of record using the CM/ECF system, which will send notification of such filing to the following:

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